

Translation

PATENT COOPERATION TREATY

PCT/EP2003/014480



PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

20 January 2005

Applicant's or agent's file reference 021329WO	FOR FURTHER ACTION See Form PCT/IPEA/416	
International application No. PCT/EP2003/014480	International filing date (day/month/year) 18 December 2003 (18.12.2003)	Priority date (day/month/year) 23 December 2002 (23.12.2002)
International Patent Classification (IPC) or national classification and IPC B61K 9/12, G01M 17/10, G01B 5/20		
Applicant HEGENSCHEIDT-MFD GMBH & CO. KG		

<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of <u>5</u> sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> (sent to the applicant and to the International Bureau) a total of <u>1</u> sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>	
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the report</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input checked="" type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input type="checkbox"/> Box No. VIII Certain observations on the international application</p>	

Date of submission of the demand 19 July 2004 (19.07.2004)	Date of completion of this report 13 January 2005 (13.01.2005)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

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Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

- ☐ This report is based on translations from the original language into the following language _____, which is language of a translation furnished for the purpose of:
- ☐ international search (under Rules 12.3 and 23.1(b))
 - ☐ publication of the international application (under Rule 12.4)
 - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

- ☐ The international application as originally filed/furnished
- ☒ the description:
- pages _____ 1-13 _____, as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☒ the claims:
- pages _____ 2-11 _____, as originally filed/furnished
- pages* _____, as amended (together with any statement) under Article 19
- pages* _____ received by this Authority on _____
- pages* _____ 1 _____ received by this Authority on _____ 16 July 2004 (16.07.2004)
- ☒ the drawings:
- pages _____ 1-8 _____, as originally filed/furnished
- pages* _____ received by this Authority on _____
- pages* _____ received by this Authority on _____
- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/figs _____
- ☐ the sequence listing (*specify*): _____
- ☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1-11	YES
	Claims		NO
Inventive step (IS)	Claims	1-11	YES
	Claims		NO
Industrial applicability (IA)	Claims	1-11	YES
	Claims		NO

2. Citations and explanations

1. Prior art: The content of document DE-T2-693 05 664 was cited as an example of a known measuring device. However, the device described in document DE-U-87 13 927 comes closer to the subject matter of claim 1.

2. PCT Article 33: Figure 6 of document DE-U-87 13 927 shows on at least one rail (5) of a railway track a measuring device for measuring the roundness of an individual railway wheel (12) or the railway wheels of a wheelset while said wheel or wheels is or are rolling over the rails, said measurement being calculated as a difference between the outer radius of the wheel flange group (2) and the radius of the running surface of the railway wheel in a measurement plane, wherein said measuring device, located within the measurement section along the rail, consists of a plurality of individual sensing elements (28-31) that are laterally distanced from one another and are arranged in the measurement plane along the axis of rotation of the railway wheel or wheelset and perpendicularly to the contact area of each railway wheel.

Accordingly, the subject matter of claim 1 differs from the above prior art in that the sensing elements are

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configured as a follower roll and are attached to the rail. This subject matter is thus novel with respect to the searched prior art in accordance with the criteria of PCT Article 33(2).

None of the available prior art documents provides any incentive to use a follower roll in a measuring device according to the preamble of claim 1. Therefore, the subject matter of said claim is considered to involve an inventive step. It follows that the criteria of PCT Article 33(3) have been fulfilled.

Industrial applicability is established.

3. Dependent claims: Since claims 2-11 are dependent upon claim 1, these claims also fulfill the criteria of PCT Article 33.

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Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

See the supplemental sheet

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VII. Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

1. Claim 1 has been duly drafted in the two-part form, but the features wherein the measuring device, which is located within the measurement section along the rail, consists of a plurality of individual sensing elements that are laterally distanced from one another and are arranged in the measurement plane along the axis of rotation of the railway wheel or wheelset and perpendicularly to the contact area of each railway wheel should not have been included in the characterizing part, since they were disclosed in document DE-U-87 13 927 in conjunction with the features indicated in the preamble (PCT Rule 6.3(b)).
2. The description is not consistent with the version of claim 1 submitted on 19 July 2004 (PCT Rule 5.1(a)(iii)).
3. Contrary to PCT Rule 5.1(a)(ii), the description does not cite document DE-U-87 13 927 or indicate the relevant prior art disclosed therein.